A

Affin Bank Bhd v Abdul Aziz bin Mohd

B HIGH COURT (PENANG) — ORIGINATING SUMMONS NO PA-24FC-600–10 OF 2019
KENNETH ST JAMES JC
13 JUNE 2022

C *Land Law — Charge — Order for sale — Whether chargor had shown any 'cause to the contrary' to warrant setting aside of order for sale — Whether Form 16D notice of default and all foreclosure cause papers and notices were properly served on chargor — Whether chargee-bank did not have to get chargor's consent before it extended additional credit facilities to borrower company* D *— Whether fact that chargor had ceased to be director/shareholder of company to whom chargee had given credit facilities did not diminish extent of his liability under the charge*

E The defendant applied to set aside an order for sale that was made against a property ('the property') that he had charged to the plaintiff as security for a loan to a company ('the borrower'). His main ground was that the plaintiff had failed to serve on him the Form 16D notice of default under the National Land Code ('the NLC') and the cause papers in the foreclosure proceedings. The F defendant also contended that the reserve price set for the second auction of the property was too low and that the plaintiff had extended additional credit facilities to the borrower without his consent. Following the first abortive auction of the property in November 2020, the High Court allowed the plaintiff's application to put the property up for auction again in August 2021 G at a lower reserve price. The defendant contended that he only came to know about the foreclosure proceedings when he saw a notice of the second auction affixed on the property. The facts of the case showed that the defendant had three different addresses at different times: (a) the 'No 9-H' address was the one given in his letter of guarantee to the plaintiff in November 2007; that was also H the address stated in the register of land titles when a search was done on the property in 2020; (b) 'No 6716' was the defendant's address in the charge document dated 29 September 2006; it was also the borrower's business address; and (c) 'No 185, Jalan Utara' was the 'assessment address' of the property as stated in a valuation report secured by the plaintiff in 2020; it was I also stated as the address of the property both in the local council's 2020 assessment bill as well as in the two proclamations of sale for the auction of the property in 2020 and 2021.

Held, dismissing the application:

(1) The plaintiff had complied with the terms of the charge and the Rules of Court 2012 for the service of cause papers and had properly served them on the defendant. The defendant had not shown any ground amounting to a 'cause to the contrary' to warrant the setting aside of the order for sale (see paras 57, 102 & 108).

(2) When it commenced the foreclosure proceedings in 2019, the plaintiff had served the cause papers on the defendant by sending them to his last-known address that was in the plaintiff's records at the time, namely, the 'No 9-H' address. This was the address in the guarantee the defendant had executed in November 2007 and, by the defendant's own admission, that was the address stated in his identity card at that material time. Clause 9.24 of the charge provided that service of legal process on the defendant could be done by sending the same by prepaid registered post to his address 'for the time being'. This phrase could only mean the address that was in the plaintiff's records at that point in time and was last known to the plaintiff. And that address was No 9-H and, in the court's view, was the proper address for service of the cause papers and the Form 16D. The defendant did not submit any other interpretation that could be given to the phrase 'for the time being' (see paras 48–50, 53–54, 73 & 75).

(3) Order 10 r 3(1)(b) of the Rules of Court 2012 read together with O 10 r 5 provided that where parties by contract (such as the charge) agreed beforehand on the method of service of cause papers, then service done by the agreed method was good service. If the defendant had changed his address and wanted all official communications to be sent there, the burden was on him to notify the plaintiff about his change of address. The defendant produced no evidence that he had notified the plaintiff about his change of address *after* executing the 2007 guarantee. He could not now complain that the plaintiff had not used his alleged current address to serve the foreclosure cause papers or other notices on him. For the reasons given aforesaid, the court found that the Form 16D was also properly served on the defendant at the No 9-H address. The service of the Form 16D complied with both s 431 of the National Land Code as well as cl 9.32 of the charge document, which provided for the service of notices (see paras 46, 58, 61, 69–70 & 72).

(4) As the charge was a continuing security that was enforceable for as long as the borrower company had banking facilities with the plaintiff, there was no obligation for the plaintiff to get the defendant's consent every time the plaintiff gave an additional facility to the company. The charge itself provided that all additional facilities that the plaintiff might extend to the borrower from time to time were secured by the charge. The charge also provided that no change of any sort in relation to or affecting the defendant would in any way affect the defendant's liability and

obligations under the charge. Hence, the defendant's contention that he had ceased to be a shareholder or director of the borrower by 2009 did not affect his obligations under the charge and did not amount to 'cause to the contrary' (see paras 77–78, 81, 87 & 89).

(5) The defendant contended that the reserve price of RM684,000 fixed by the court for the second auction of the property in August 2021 was too low and claimed that the market value of the property at that time was between RM850,000 and RM900,000. Yet, he failed to produce any valuation report to substantiate his assertion despite having ample time to do so. Hence, the defendant's complaint on this ground was untenable and did not amount to a cause to the contrary that justified setting aside the order for sale (see paras 91–92 & 95–99).

[Bahasa Malaysia summary

Defendan memohon untuk mengetepikan perintah penjualan yang dibuat terhadap satu hartanah ('hartanah tersebut') yang telah digadainya kepada plaintif sebagai jaminan untuk pinjaman kepada syarikat ('peminjam tersebut'). Alasan utamanya adalah plaintif telah gagal menyampaikan notis keingkaran Borang 16D kepadanya di bawah Kanun Tanah Negara ('KTN') dan kertas kausa dalam prosiding halangtebus. Defendan juga berhujah bahawa harga rizab yang ditetapkan untuk lelongan kedua hartanah tersebut adalah terlalu rendah dan bahawa plaintif telah memberikan kemudahan kredit tambahan kepada peminjam tanpa kebenarannya. Berikutan lelongan abortif pertama hartanah tersebut pada November 2020, Mahkamah Tinggi membenarkan permohonan plaintif untuk meletakkan hartanah tersebut untuk dilelong semula pada Ogos 2021 pada harga rizab yang lebih rendah. Defendan berhujah bahawa beliau hanya mendapat tahu tentang prosiding halangtebus apabila melihat notis lelongan kedua dilekatkan pada hartanah tersebut. Fakta kes menunjukkan defendan mempunyai tiga alamat berbeza pada masa yang berbeza: (a) alamat 'No 9-H' adalah yang diberikan dalam surat jaminannya kepada plaintif pada November 2007; ini juga adalah alamat yang dinyatakan dalam daftar hak milik tanah apabila carian dilakukan ke atas hartanah tersebut pada tahun 2020; (b) 'No 6716' adalah alamat defendan dalam dokumen gadaian bertarikh 29 September 2006; ia juga adalah alamat perniagaan peminjam; dan (c) 'No 185, Jalan Utara' adalah 'alamat taksiran' hartanah seperti yang dinyatakan dalam laporan penilaian yang diberikan oleh plaintif pada tahun 2020; ia juga dinyatakan sebagai alamat hartanah dalam bil taksiran 2020 majlis tempatan serta dalam dua pengisytiharan penjualan untuk lelongan hartanah tersebut pada 2020 dan 2021.

Diputuskan, menolak permohonan:

(1) Plaintif telah mematuhi syarat-syarat gadaian dan Kaedah-Kaedah Mahkamah 2012 bagi penyampaian kertas kausa dan telah menyampaikannya dengan sewajarnya kepada defendan. Defendan tidak

menunjukkan apa-apa alasan yang menyebabkan 'sebab sebaliknya' untuk menjamin pengenepian perintah penjualan (lihat perenggan 57, 102 & 108).

(2) Apabila ia memulakan prosiding halangtebus pada 2019, plaintif telah menyampaikan kertas kausa kepada defendan dengan menghantarnya ke alamat terakhirnya yang diketahui yang terdapat dalam rekod plaintif pada masa tersebut, iaitu, 'alamat No 9-H'. Ini adalah alamat dalam jaminan yang telah disempurnakan oleh defendan pada November 2007 dan, dengan pengakuan defendan sendiri, ianya adalah alamat yang dinyatakan dalam kad pengenalannya pada masa material. Klausa 9.24 gadaian memperuntukkan bahawa penyampaian proses undang-undang ke atas defendan boleh dilakukan dengan menghantar perkara yang sama melalui pos berdaftar prabayar ke alamatnya 'buat masa ini'. Frasa ini hanya boleh bermaksud alamat yang terdapat dalam rekod plaintif pada masa tersebut dan kali terakhir diketahui oleh plaintif. Dan alamat tersebut adalah No 9-H dan, pada pandangan Mahkamah, adalah alamat yang sesuai untuk penyerahan kertas kausa dan Borang 16D. Defendan tidak mengemukakan sebarang tafsiran lain yang boleh diberikan kepada frasa 'buat masa ini' (lihat perenggan 48–50, 53–54, 73 & 75).

(3) Perintah 10 r 3(1)(b) Kaedah-Kaedah Mahkamah 2012 dibaca bersama A 10 k 5 dengan syarat bahawa jika pihak-pihak secara kontrak (seperti gadaian) bersetuju terlebih dahulu mengenai kaedah penyampaian kertas kausa, maka penyampaian yang dilakukan dengan kaedah yang dipersetujui adalah penyampaian yang baik. Jika defendan telah menukar alamatnya dan mahu semua komunikasi rasmi dihantar ke sana, beban berada di atasnya untuk memberitahu plaintif tentang pertukaran alamatnya. Defendan tidak mengemukakan bukti bahawa beliau telah memberitahu plaintif tentang pertukaran alamatnya selepas melaksanakan jaminan 2007. Beliau kini tidak boleh mengadu bahawa plaintif tidak menggunakan alamat semasanya untuk menyampaikan kertas kausa halangtebus atau notis lain kepadanya. Atas alasan yang dinyatakan di atas, Mahkamah mendapati bahawa Borang 16D juga telah disampaikan dengan sewajarnya kepada defendan di alamat No 9-H. Penyampaian Borang 16D mematuhi kedua-dua s 431 Kanun Tanah Negara serta klausa 9.32 dokumen gadaian, yang memperuntukkan penyampaian notis (lihat perenggan 46, 58, 61, 69–70 & 72).

(4) Memandangkan gadaian tersebut adalah jaminan berterusan yang boleh dikuatkuasakan selagi syarikat peminjam mempunyai kemudahan perbankan dengan plaintif, tidak ada kewajipan untuk plaintif mendapatkan persetujuan defendan setiap kali plaintif memberi kemudahan tambahan kepada syarikat tersebut. Gadaian tersebut sendiri memperuntukkan bahawa semua kemudahan tambahan yang mungkin

diberikan oleh plaintif kepada peminjam dari semasa ke semasa telah dijamin oleh gadaian tersebut. Gadaian juga memperuntukkan bahawa tiada apa-apa jenis perubahan berhubung atau menjejaskan defendan akan dalam apa-apa cara menjejaskan liabiliti dan obligasi defendan di bawah gadaian tersebut. Oleh itu, pertikaian defendan bahawa beliau telah berhenti menjadi pemegang saham atau pengarah peminjam menjelang 2009 tidak menjejaskan kewajipannya di bawah gadaian dan tidak 'menyebabkan sebaliknya' (lihat perenggan 77–78, 81, 87 & 89).

(5) Defendan berhujah bahawa harga rizab RM684,000 yang ditetapkan oleh mahkamah untuk lelongan kedua hartanah pada Ogos 2021 adalah terlalu rendah dan mendakwa bahawa nilai pasaran hartanah tersebut pada masa itu adalah antara RM850,000 dan RM900,000. Namun, beliau gagal mengemukakan sebarang laporan penilaian untuk mengesahkan dakwaannya walaupun mempunyai masa yang mencukupi untuk berbuat demikian. Oleh itu, aduan defendan atas alasan ini adalah tidak boleh dipertahankan dan tidak membawa kepada sebab sebaliknya yang mewajarkan mengenepikan perintah penjualan (lihat perenggan 91–92 & 95–99).]

Cases referred to

Hong Leong Finance Bhd v Travers Development Sdn Bhd [2001] 5 MLJ 268; [2001] 1 CLJ 123; [2000] AMEJ 0250, HC (refd)

Low Lee Lian v Ban Hin Lee Bank Bhd [1997] 1 MLJ 77; [1997] 1 AMR 1036; [1997] 2 CLJ 36, SC (refd)

People Realty Sdn Bhd v Hong Leong Bank Bhd & Anor [2007] 6 MLJ 595; [2007] 6 AMR 21; [2008] 1 CLJ 73, CA (refd)

Legislation referred to

Rules of Court 2012 O 10 rr 3(1)(b), 5

National Land Code ss 254, 256(3), 340, 431, 431(1)(d)(i), Form 16D

Goo Chun Kit (Anual & Foong) for the applicant.
Abd Rahim bin Mohamed (Tung, Chan & Partners) for the respondent.

Kenneth St James JC:

PRELUSION

[1] The defendant executed a charge in favour of the plaintiff bank. The charge was over the defendant's property ('property'). The plaintiff commenced foreclosure proceedings. The plaintiff obtained an order for sale. The property was about to be auctioned. The defendant applied to set aside the order for sale. Should the order for sale be set aside?

[2] The defendant submitted four grounds to set aside the order for sale. These grounds were: A

(a) the foreclosure cause papers were not properly served on him;

(b) the required Form 16D default notice under a charge was not properly served on him; B

(c) the order for sale resulted from a default under additional loan facilities given by the plaintiff. The plaintiff did not get the defendant's consent to give the additional loan facilities; and

(d) the reserve price that was set for the property was too low. The defendant argued that it was much lower than the current market value of the property. C

ONLY ONE PRAYER IN THE DEFENDANT'S APPLICATION NEEDED TO BE DETERMINED D

[3] I first set out the parameters of the defendant's application.

[4] The defendant's application, as initially filed, sought the following orders: E

(i) that leave be granted for him to make the application;

(ii) that the orders of November 2019 and April 2021 to auction the property (which I will collectively call the 'order for sale') be set aside; and F

(iii) that the auction that was set for 17 August 2021 be stayed pending the disposal of the defendant's application.

[5] Prayer (i) was redundant. The defendant did not need leave to file the application. So I did not have to deal with prayer (i). G

[6] Prayer (iii) was already granted. The previous court that heard the application granted an order on 16 August 2021 — the day before the scheduled auction — to stay the auction.

H

[7] That left prayer (ii). The parties agreed that I only needed to decide on prayer (ii) — whether to set aside the order for sale.

THE LAW ON THE SETTING ASIDE OF AN ORDER FOR SALE

I

[8] Several provisions of the National Land Code ('the NLC') are relevant and applicable to a decision on this issue. The first provision is s 256(3), which provides that 'the Court *shall* order the sale of the land to which the charge relates *unless* it is satisfied of the existence of *cause to the contrary*'.

[9] The locus classicus for what is meant by 'cause to the contrary' is the case of *Low Lee Lian v Ban Hin Lee Bank Bhd* [1997] 1 MLJ 77; [1997] 1 AMR 1036; [1997] 2 CLJ 36. Our Supreme Court propounded that 'cause to the contrary within s 256(3) may be established only in three categories of cases'.

[10] The first category is where the chargor (here: the defendant) is able to bring his case within any of the *exceptions to the indefeasibility principle* contained in s 340 of the NLC.

[11] In the context of our matter, s 340 of the NLC provides that the chargee's (here: the plaintiff's) rights under the charge are indefeasible. When a charge is indefeasible, it means that the charge is valid; it cannot be nullified; it cannot be canceled. And since the charge is indefeasible, the order for sale — which was obtained because there was a default under the charge — should not be set aside.

[12] But s 340 also provides for the *exceptions* to this principle of indefeasibility. If, for instance, the defendant here could show that there was fraud, or misrepresentation, or some unlawful act by the plaintiff — then the charge becomes defeasible. It becomes invalid, or nullified, and should be canceled. This is the 'cause to the contrary'. Then, naturally, the order for sale should be set aside.

[13] The second category of cases to establish a cause to the contrary is where the defendant was able to demonstrate that the plaintiff had *failed to satisfy the required conditions* for the court to grant the order for sale.

[14] For example, to enable the plaintiff (chargee) to get the order for sale, the plaintiff must have served the required Form 16D on the defendant (chargor). Form 16D is a default notice. It notifies the defendant that there was breach of the terms of the charge. It informs the defendant what the breach was. It notifies the defendant that the breach must be remedied within a certain period of time, and that if the defendant does not remedy the breach within that period of time, the plaintiff will obtain the order for sale. The Form 16D is effectively a warning to the defendant.

[15] If the plaintiff did not serve the Form 16D on the defendant, it would give the defendant his 'cause to the contrary' to set aside the order for sale.

[16] The third category of cases where the defendant could show a cause to the contrary to set aside the order for sale was by disclosing that the grant of the order for sale *offended some rule of law or equity.*

[17] The Supreme Court in the *Low Lee Lian* case held as follows:

> In our judgment, cause to the contrary within s 256(3) may be established only in three categories of cases.
>
> First, it may be taken as settled that a chargor who is able to bring his case within any of the exceptions to the indefeasibility doctrine housed in s 340 of the Code establishes cause to the contrary. That section provides as follows:
>
> > 340 (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, *charge* or easement is for the time being registered, shall, subject to the following provisions of this section be indefeasible.
> >
> > (2) The title or interest of any such person or body shall *not* be indefeasible —
> >
> > (a) in any case of *fraud* or *misrepresentation* to which the person or body, or any agent of the person or body, was a party or privy; or
> >
> > (b) where registration was obtained by *forgery*, or by means of an insufficient or void instrument; or
> >
> > (c) where the title or interest was *unlawfully acquired* by the person or body in the purported exercise of any power or authority conferred by any written law.
> >
> > ...
> >
> > (4) Nothing in this section shall prejudice or prevent —
> >
> > (a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or
> >
> > (b) the *determination* of any title or interest *by operation of law.*
>
> In other words, a chargor who is able to demonstrate that the charge, the enforcement of which is sought, is defeasible upon one or more of the grounds specified under subsections (2) and (4)(b) above will be held to have established cause to the contrary under s 256(3) ... (Emphasis added.)

THE RELEVANT ADDRESSES EXTRACTED FROM THE DOCUMENTARY EVIDENCE

[18] There were three addresses, *for service*, which were relevant for consideration. The first address was No 9-H, Jalan Batu Lanchang, 11600 Georgetown, Pulau Pinang. I will refer to this address as 'No 9-H'.

[19] This No 9-H address was stated as the *defendant's address*:

(a) in the guarantee dated 26 November 2007 that was executed by the defendant, to guarantee the loan facilities given by the plaintiff ('2007 guarantee'); and

(b) in the Land Search extract (*Catatan Carian Persendirian*) of March 2020, issued by the Pejabat Pengarah Tanah Dan Galian Pulau Pinang. So, as the registered owner of the property, the defendant's address that was *recorded in the Register of titles* was No 9-H.

[20] These below are the relevant portions of the 2007 guarantee which contained the defendant's No 9-H address:

In consideration of I/We having made a request and at my/our desire of you, AFFIN BANK BERHAD (hereinafter called "the Bank" which expression shall where the context so admits include the Bank's successors and assigns) having opened, opening or continuing an account with and having made, making or shall make advance loans or otherwise having given or giving or shall give credit or affording banking facilities and accomodation or not terminating or withdrawing any such advances credit or banking facilities or accomodation already made or given to MUKMIN ENVIRO LAB SDN. BHD. (478017-T)
of No : 8A, Tingkat 1, Lebuh Tenggiri 2, Pusat Bandar Seberang Jaya, 13700 Seberang Jaya, Pulau Pinang
(hereinafter called "the Customer") for as long as you may at your sole discretion deem fit I/We ABDUL AZIZ BIN MOHD (NEW NRIC NO : 621024-07-5085/OLD NRIC NO : 6916972) of No. 9-H, Jalan Batu Lanchang, 11600 Georgetown, Pulau Pinang and RAHMATULLAH BIN P.M.D HUSSAIN (NEW NRIC NO : 661228-07-5323/(OLD NRIC NO : A0564597) of No. 6716, Pengkalan Tambang, 13500 Bukit Mertajam, Pulau Pinang the undersigned hereby jointly and severally agree with and unconditionally guarantee you as follows, that is to say:-

Signature of Guarantor

Name : ABDUL AZIZ BIN MOHD
I.C. No. : 621024-07-5085/6916972
Address : No. 9-H, Jalan Batu Lanchang, 11600 Georgetown, Pulau Pinang
Occupation : Director

[21] And here below is the portion of the Land Search extract that contained the No 9-H address:

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Pemilikan dan Alamat :

ABDUL AZIZ BIN MOHD , 1/1 bhgn.
No K/P Baru : 621024-07-5085, Warganegara Malaysia
NO 9-H JALAN BATU LANCHANG 11600 PULAU PINANG

Tanggungan dan endosan-endosan lain :

No Pers 0799SC2003003391 Pindahmilik Tanah
oleh CHONG LEAN IMM ,No. Kad pengenalan : 6304559 dan
CHONG LEAN SIM ,No. Kad pengenalan : 5560800 dan
CHONG ENG KHUAN ,No. Kad pengenalan : 670112-07-5449 sbg Pentadbir ,1/1 bahagian
kepada ABDUL AZIZ BIN MOHD, No. Kad pengenalan : 621024-07-5085, 1/1 bahagian
NO 9-H JALAN BATU LANCHANG 11600 Pulau Pinang
Didaftarkan pada 28 Februari 2003 jam 11:09:33 pagi

[22] The second relevant address was No 6716 (Pengkalan Tambang), Permatang Pasir, 13500 Bukit Mertajam, Seberang Perai Tengah, Pulau Pinang. I will refer to this address as 'No 6716'.

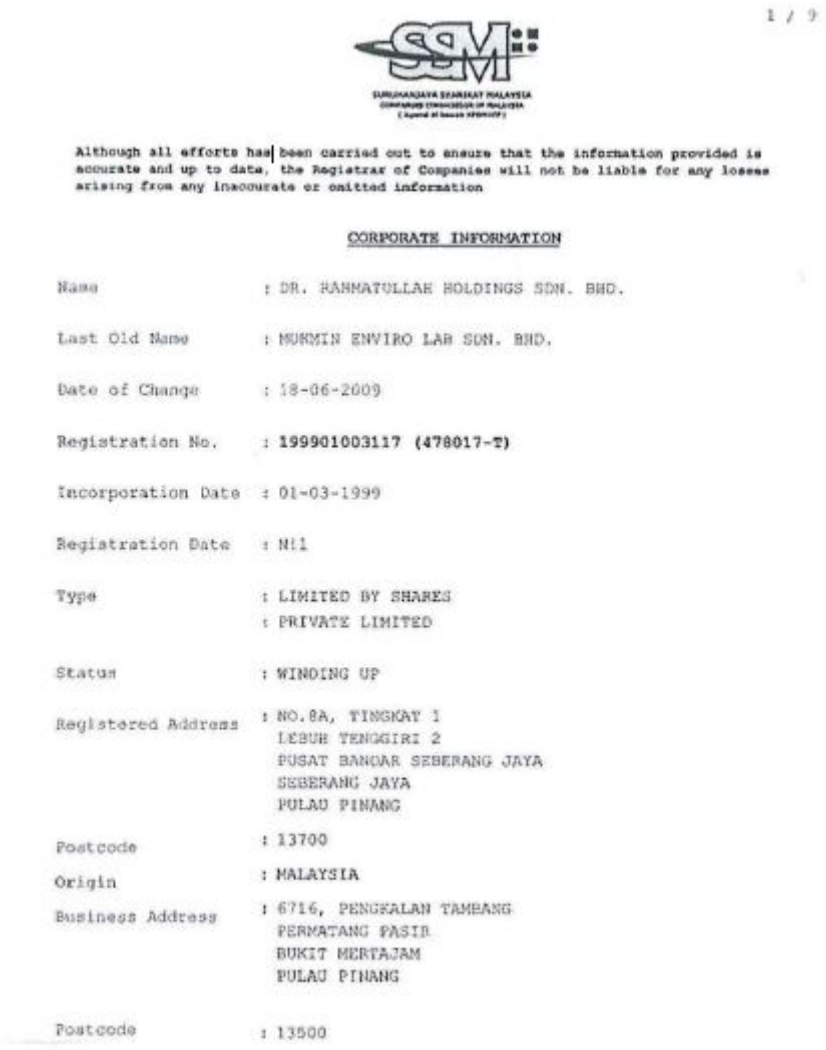
[23] This No 6716 address was stated as the *defendant's address* in the charge dated 29 September 2006.

[24] This is the portion of the charge that displayed the No 6716 address:

Where the Chargor is an Individual or Natural Person	
Name of Chargor	ABDUL AZIZ BIN MOHD
Passport/Identity Card No.	NRIC NO. . 621024-07-5085/6916972
Address	No. 6716 (Pengkalan Tambang), Permatang Pasir, 13500 Bukit Mertajam, Seberang Perai Tengah, Pulau Pinang.

[25] The No 6716 address was also stated as the *borrower company's business address* in the Suruhanjaya Syarikat Malaysia search on the borrower company — Dr Rahmatullah Holdings Sdn Bhd (previously known as Mukmin Enviro Lab Sdn Bhd). The defendant did not dispute that No 6716 was the borrower company's business address.

[26] This is the relevant portion of the SSM search:



1 / 9

Although all efforts has been carried out to ensure that the information provided is accurate and up to date, the Registrar of Companies will not be liable for any losses arising from any inaccurate or omitted information

CORPORATE INFORMATION

Name	: DR. RAHMATULLAH HOLDINGS SDN. BHD.
Last Old Name	: MUKMIN ENVIRO LAB SDN. BHD.
Date of Change	: 18-06-2009
Registration No.	: 199901003117 (478017-T)
Incorporation Date	: 01-03-1999
Registration Date	: Nil
Type	: LIMITED BY SHARES : PRIVATE LIMITED
Status	: WINDING UP
Registered Address	: NO.8A, TINGKAT 1 LEBUH TENGGIRI 2 PUSAT BANDAR SEBERANG JAYA SEBERANG JAYA PULAU PINANG
Postcode	: 13700
Origin	: MALAYSIA
Business Address	: 6716, PENGKALAN TAMBANG PERMATANG PASIR BUKIT MERTAJAM PULAU PINANG
Postcode	: 13500

[27] The third address was No 185, Jalan Utara, 11700 Gelugor, Pulau Pinang. I will refer to this address as 'No 185, Jalan Utara'.

[28] No 185, Jalan Utara was stated as the 'assessment address' of the *defendant's property* in the valuer: Rahim & Co's March 2020 valuation report.

[29] Here below was the pertinent portion of the valuation report:

A

3

Our Ref: 40V200080

SUMMARY OF REPORT

Client	:	AFFIN BANK BERHAD
Bank's Customer	:	Dr Rahmatullah Holdings Sdn Bhd
Purpose	:	Foreclosure
Assessment Address	:	No. 185, Jalan Utara, 11700 Gelugor, Pulau Pinang
Property Type	:	A single-storey detached house
Lot No.	:	Lot No. 677, Town of Gelugor, North-East District, State of Pulau Pinang
Title No.	:	PN 877
Registered Owner	:	Abdul Aziz Bin Mohd – Full share

B

C

D

[30] No 185, Jalan Utara was also stated as the *property's address* in the Assessment Bill for the first half of the year 2020, issued by the Majlis Bandaraya Pulau Pinang.

E

[31] Further, No 185, Jalan Utara was also stated as the *property's address* in the two proclamations of sale — one for the auction in November 2020 (which was abortive), and the other for the scheduled auction in August 2021 (which was canceled by the stay order of 16 August 2021).

F

[32] Set out below are the relevant portions of both the proclamations of sale:

G

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H

I

A

AKAN MENJUAL SECARA
LELONG AWAM
Pada Hari Selasa, 10 November 2020, Pada Jam 11:00 pagi,
SECARA ELEKTRONIK DI LAMAN WEB e-LELONG, PUSAT OPERASI e-LELONG,
KOMPLEKS MAHKAMAH KUANTAN, PAHANG DARUL MAKMUR

B

NOTA: Bakal pembeli adalah dinasihatkan agar membuat carian Hakmilik secara rasmi di Pejabat Tanah dan memeriksa semua tanggungan, bebanan serta mengenal pasti dengan tepat hartanah tersebut sebelum jualan lelongan dijalankan.

C

Sila layari https://elelong.kehakiman.gov.my/bidderweb

BUTIR-BUTIR HAKMILIK:

D

No. Hakmilik	:	877
No. Lot	:	677
Mukim / Daerah / Negeri	:	Bandar Gelugor / Timor Laut / Pulau Pinang
Pegangan	:	Hakmilik Pajakan
No. Petak/No. Tingkat/No. Bangunan	:	
Keluasan Tanah	:	5234.00 kaki persegi
	:	486.24 meter persegi

E

Pemilik Berdaftar	:	Abdul Aziz Bin Mohd
Syarat Nyata	:	Rumah Berkembar

LOKASI DAN PERIHAL HARTANAH :

F

Hartanah tersebut adalah **Hartanah tersebut adalah No. 185, Jalan Utara, 11700 Gelugor, Pulau Pinang yang beralamat pos di 677, Jalan Utara, 11700 Georgetown, Pulau Pinang** yang beralamat pos di **677, Jalan Utara, 11700, GEORGETOWN, Pulau Pinang.**

G

H

I

AKAN MENJUAL SECARA
LELONG AWAM
Pada Hari Selasa, 17 Ogos 2021, Pada Jam 11:00 pagi,
SECARA ELEKTRONIK DI LAMAN WEB e-LELONG, PUSAT OPERASI e-LELONG, KOMPLEKS MAHKAMAH KUANTAN, PAHANG DARUL MAKMUR

NOTA: **Bakal pembeli adalah dinasihatkan agar membuat carian Hakmilik secara rasmi di Pejabat Tanah dan memeriksa semua tanggungan, bebanan serta mengenal pasti dengan tepat hartanah tersebut sebelum jualan lelongan dijalankan.**

Sila layari https://elelong.kehakiman.gov.my/bidderweb

BUTIR-BUTIR HAKMILIK:

No. Hakmilik	:	PN 877
No. Lot	:	Lot 677
Mukim / Daerah / Negeri	:	Bandar Gelugor / Timur laut / Pulau Pinang
Pegangan	:	Hakmilik Pajakan

LOKASI DAN PERIHAL HARTANAH :

Hartanah tersebut adalah **Hartanah tersebut adalah No. 185, Jalan Utara, 11700 Gelugor, Pulau Pinang yang beralamat pos di 677, Jalan Utara, 11700 Georgetown, Pulau Pinang** yang beralamat pos di **677, Jalan Utara, 11700, GEORGETOWN, Pulau Pinang.**

[33] So the three relevant addresses extracted from the documentary evidence before me were: No 9-H, No 6716, and No 185, Jalan Utara.

THE ANSWER TO THE FIRST GROUND: THE CAUSE PAPERS WERE PROPERLY SERVED ON THE DEFENDANT

[34] The defendant averred that he did not receive the *cause papers* that led to the order for sale, namely the originating summons and the affidavit in support.

[35] He averred that he only knew that his property was being foreclosed in *August 2021*, when the process server posted the plaintiff's solicitors' cover letter dated 4 August 2021 on the property. The cover letter attached the proclamation of sale for the scheduled auction in August 2021.

[36] To prove his averment, the defendant exhibited his NRIC, which disclosed that his NRIC address was No 185, *Jalan Bunga Cempaka*, 11700

Gelugor, Pulau Pinang. He asserted that *that* address is the property's address and that he lived there.

[37] But he presented *no documentary evidence* to prove that the *property's address was in fact* No 185, *Jalan Bunga Cempaka.*

[38] In contrast, the plaintiff averred that the scheduled auction in August 2021 was actually the *second* auction.

[39] There was an earlier auction in *November 2020.* That first auction took place on 10 November 2020. It was abortive.

[40] For that first auction, the plaintiff's process server averred in his affidavit of service dated 3 November 2020 that he posted the plaintiff's solicitors' cover letter dated 15 October 2020 on the door (*di hadapan pintu*) of the property at *No 185, Jalan Utara.* That cover letter similarly attached the proclamation of sale for the first auction.

[41] As noted above, No 185, Jalan Utara was stated as the property's assessment address on Rahim & Co's valuation report, as well as on the Assessment Bill issued by the Majlis Bandaraya Pulau Pinang.

[42] If the posting for the first auction was in fact done *at the property* (as was sworn to by the process server), the defendant would have known about the foreclosure proceeding back in *October 2020*. Yet he alleged that he found out about the foreclosure proceeding for the first time only in *August 2021*.

[43] Anyhow, this issue about the first time that the defendant found out about the foreclosure proceeding was not a determinant issue. I merely wanted to point out that there were incongruent affidavit-evidence coming in from both sides. I therefore had to decide the defendant's application on an analysis of the *documentary-evidence.*

[44] Coming back to the issue of whether the cause papers were properly served on the defendant — the plaintiff asserted that it served the cause papers on the defendant *according to the terms of the charge.*

[45] The Rules of Court 2012 ('the ROC 2012') provide for the service of cause papers. It is trite that procedural law allows for the parties themselves to agree on the manner in which cause papers (and other communication and notices) are to be given to each other.

[46] Order 10 r 3(1)(b) of the ROC 2012, read together with O 10 r 5,

provides that where the parties, *by contract* (such as the charge), *agree beforehand* on the method to serve cause papers between them, then the service done by the *agreed method* is *good service.*

[47] Order 10 r 3(1)(b) and O 10 r 5 are set out here:

> Order 10. Service of originating process: General provisions
>
> ...
>
> 3 Service of writ in pursuance of contract (O 10, r 3)
>
> (1) Where —
>
> (b) *the contract provides* that, in the event of any action in respect of the contract being begun, *the process* by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, *in such manner or at such place* (whether within or out of the jurisdiction) as may be so specified,
>
> *then*, if an action in respect of the contract is begun in the Court and the writ by which it is begun is *served in accordance with the contract*, the writ shall, subject to paragraph (2), be *deemed to have been duly served on the defendant.*
>
> 5 Service of originating summons (O 10, r 5)
>
> Rules 1 to 4 (except rules 1(3) and (4)) shall apply with the necessary modifications in relation to *an originating summons* as they apply in relation to a writ. (Emphasis added.)

[48] Now, section (clause) 9.24 of the charge provided that the service of legal process (read: cause papers) by the plaintiff on the defendant can be done by prepaid registered post to the defendant's address 'for the time being':

> Section 9.24 LAW
>
> This Charge shall be governed by and construed in accordance with the laws of Malaysia but in enforcing this Charge, the Bank shall be at liberty to initiate and take action or proceedings or otherwise against the Chargor in Malaysia and/or elsewhere as the Bank may deem fit and the parties hereto hereby agree that where any actions or proceedings are initiated and taken in Malaysia they shall submit to the non-exclusive jurisdiction of the Courts Malaysia in all matters connected with the obligation and liabilities of the parties hereto under or arising out of this instrument and the service of any writ or summons or any legal proeess in respect of any such action or proceeding may be effected on the Chargor or the Bank by forwarding a copy of the writ or summons statement of claim or other legal process by prepaid registered post to their respective registered addresses for the time being.

[49] I interpreted that the defendant's address 'for the time being' can only mean the defendant's address that was known to the plaintiff at *that* applicable point in time. In other words, the defendant's address 'for the time being' was

A the defendant's address that was *last known by the plaintiff,* which was the defendant's address that was *in the plaintiff's records* at that point in time.

[50] The defendant did not submit any alternative interpretation that could be given to the phrase: the defendant's address 'for the time being'.
B

[51] The plaintiff served the cause papers on the defendant at the defendant's last known address that was in the plaintiff's records at the time — the No 9-H address.

C

[52] The charge was created in *September 2006.* In the charge, the defendant's address was stated as No 6716. At this juncture, I wish to note that the defendant was not contending that the cause papers should have been served on him at No 6716. The defendant accepted that No 6716 was the
D borrower company's business address, and that it should not be used as the address to serve cause papers.

[53] The defendant signed the 2007 guarantee — to secure the payment of the loan facilities utilised by the borrower company — in *November 2007.* In
E the 2007 guarantee, the defendant's address was stated as No 9-H, which made it the *defendant's last known address in the plaintiffs records* at the time.

[54] When the plaintiff started foreclosure proceedings in *2019*, the plaintiff
F in fact served the cause papers on the defendant by sending them to No 9-H — the defendant's last known address that was in the plaintiff's records, that is, the defendant's address 'for the time being'.

[55] This was evidenced by the plaintiff's affidavit of service dated
G 15 November 2019, where it was averred that the plaintiff served on the defendant the originating summons and the affidavit in support, together with a cover letter, by posting them by registered post to No 9-H.

[56] The plaintiff also served on the defendant an additional affidavit,
H together with another cover letter, again by posting them by registered post to No 9-H.

[57] I therefore held that the plaintiff had complied with the terms of the charge for the service of cause papers. I found that the plaintiff had properly
I served the cause papers on the defendant. And so, there was no cause to the contrary to warrant the setting aside of the order for sale on this ground.

[58] A bit further on this issue. If the defendant had changed his address, and yet wanted the plaintiff to serve cause papers (or any other notice) on him at his

current address, the burden was on him to notify the plaintiff about his change of address: *Hong Leong Finance Bhd v Travers Development Sdn Bhd* [2001] 5 MLJ 268; [2001] 1 CLJ 123; [2000] AMEJ 0250.

[59] The addresses that are stated in contracts and legal instruments, such as a charge, are to enable parties to communicate with, to give prescribed notices to, and to serve cause papers on each other. If a party wishes to receive such contractual communication or notice or cause papers, they should diligently inform the counter party about the address at which they want to receive the communication, notice or cause papers.

[60] I held that it was the defendant's *obligation* to notify the plaintiff, so that the plaintiff then became obligated and bound to communicate with the defendant, or issue notices to the defendant, or serve cause papers on the defendant — at the defendant's *latest chosen address* for that purpose.

[61] But here, the defendant produced no evidence that he had notified the plaintiff about his change of address. He could not now complain that for the purpose of the foreclosure proceeding, the plaintiff did not use his alleged current address to serve cause papers or notices on him there.

THE ANSWER TO THE SECOND GROUND: THE FORM 16D WAS ALSO PROPERLY SERVED ON THE DEFENDANT

[62] Section 254 of the NLC provides that before applying for the order for sale, the plaintiff must first serve the Form 16D on the defendant.

[63] Section 431 of the NLC provides for the methods of service of the Form 16D. One of the prescribed methods is to serve the Form 16D by sending it by prepaid registered post to the defendant's 'last known abode'.

[64] Subsection 431(1)(d)(i) states:

> Section 431. Methods of service.
>
> *Without prejudice to any other method of service,* a notice may be served on a person or body for the purposes of this Act —
>
> (d) by sending the notice by *prepaid registered post* to the person or body at an address for service given in pursuance of any provision of this Act or, where no such address has been given —
>
> (i) at the person's usual or *last known abode* or place of business ... (Emphasis added.)

[65] I interpreted that the phrase 'last known abode' must mean the

defendant's residential address that was last known to the plaintiff, which must be No 9-H. That was the defendant's last known address in the plaintiff's records, which was stated in the 2007 guarantee.

[66] And similar to issue of the address to serve cause papers, the defendant did not submit any other address for my consideration.

[67] Further, s 431 begins with the phrase 'without prejudice to any other method of service' — which provides for *service by the terms of the sharge.*

[68] Section 9.32(2) of the charge set out that any notice that was required to be given by the plaintiff to the defendant must have been given by letter addressed to an 'address as may from time to time be notified by the Chargor to the Bank for the purpose', or to 'the Chargor's address last known':

> Section 9.32 NOTICES
>
> (1) *Mode*: Every notice or demand or or communication under this Charge shall be in writing but any such notice or demand may be given or made by telex (where possible) or telegram or cable.
>
> (2) *Addresses*: Subject as aforesaid any notice or certificate or request or communication required to be given by Chargor to the Bank hereunder by the Chargor shall be signed or given by the Chargor or the Chargor's authorised signatories from time to time addressed to the Bank at the Bank's address stated in Section 2 of the First Schedule hereto or at such other address as may from time to time be notified by the Bank to the Chargor for that purposes. Any notice or certificate or request or communication required to be given to the Chargor by the Bank hereunder shall be signed or given by an officer of the Bank for the time being or its solicitors or agents if given by telegram cable or letter be addressed to the Chargor at the Chargor's address stated in Section 1 of the First Schedule hereto or at the Chargor's stated address or such other address as may from time to time be notified by the Chargor to the Bank for the purpose or at the Chargor's address last known.

[69] As I pointed out, the defendant failed to produce any evidence that he had notified the plaintiff about any change in his address *after* executing the 2007 guarantee, So 'the chargor's address last known' could only be No 9-H.

[70] In the plaintiff's affidavit in support of the originating summons, the plaintiff averred that it issued the Form 16D, under the cover of its solicitors' letter dated 8 May 2019, by registered post, to the defendant's No 9-H address.

[71] The plaintiff exhibited the Form 16D, the cover letter, as well as the post office date-stamp for posting — '18 May 2019' — which clearly proved that the Form 16D was sent by registered post on 18 May 2019.

[72] I therefore held that the plaintiff properly served the Form 16D on the defendant by sending it to the defendant in compliance with s 431 of the NLC, *and* in compliance with the term that provided for the service of notices in the charge: section 9.32.

THE DEFENDANT'S CONCESSION ABOUT NO 9-H

[73] In his affidavit in reply (*afidavit balasan*) dated 20 September 2021, the defendant conceded that the No 9-H address was probably stated on the 2007 guarantee because at the time (2007), the address stated in his NRIC was No 9-H. The solicitors who prepared the 2007 guarantee probably used the *defendant's NRIC address at the time* — No 9-H — as his address for the purpose of the 2007 guarantee.

[74] He averred: 'Saya menyatakan bahawa alamat 9-H, Batu Lanchang tersebut kemungkinan tertulis pada 'Perjanjian Jaminan Individu' kerana *pada waktu itu alamat pada kad pengenalan saya masih* tertera sebagai 9-H, Batu Lanchang. Perjanjian Jaminan Individu tersebut yang disediakan oleh peguamcara kemungkinan diisi berpandukan alamat pada kad pengenalan'.

[75] The defendant's concession — that the No 9-H address was his NRIC address in 2007 — reinforced my finding that the No 9-H address was the correct and proper address to serve the cause papers and the Form 16D on the defendant. The No 9-H address was the defendant's last known address in the plaintiff's records.

[76] I therefore decided that the defendant's unsubstantiated allegation about not receiving the cause papers and the Form 16D — did not form a cause to the contrary to set aside the order for sale.

THE ANSWER TO THE THIRD GROUND: THE PLAINTIFF HAD NO OBLIGATION TO GET THE DEFENDANT'S CONSENT TO GIVE ADDITIONAL LOAN FACILITIES

[77] The defendant alleged these facts:

(a) the loan facilities were given to the borrower company, and the charge was created in 2006;

(b) he gave the 2007 guarantee in 2007;

(c) by 2009, he was ousted from the borrower company. He alleged that the borrower company had forged certain shares transfer forms. He was no longer a shareholder nor a director of the borrower company; and

(d) yet the plaintiff continued to give additional loan facilities to the borrower company in 2018, without his consent.

[78] I found that these complaints were not relevant to the defeasibility of the charge. These complaints may relate to the disputes that the defendant might have had with the borrower company. But these complaints had no relevance to the first category of cases that constituted a cause to the contrary against the charge. Thus these complaints do not warrant a setting aside of the order for sale.

[79] The defendant failed to assert and prove any fraud or misrepresentation on the part of the plaintiff. The defendant failed to assert and prove that the charge was obtained by forgery. The defendant failed to assert and prove that the charge was in some way unlawfully acquired. And the defendant failed to assert and prove that the plaintiff's interest in the charge was determined by some operation of law.

[80] More significantly, the charge is a *continuing security* for the provision of banking facilities by the plaintiff to the corrower company. The pertinent clauses are sections 1.02, 2.01, 3.03 and 9.02(1).

[81] Section 1.02 of the charge provided that the facilities agreement entered into by the borrower company (and signed by the defendant as one of the directors) — to secure the loan facilities given to the borrower company — includes *additional facilities* that the plaintiff may give to the borrower company *from time to time.*

[82] This is how section 1.02 is worded:

> Section 1.02 FACILITIES AGREEMENT
>
> By a Facilities Agreement entered into on the date more particularly identified in Section 3 of the First Schedule hereto (hereinafter called 'the Facilities Agreement' which expression where the context so permits, include any amendment(s) or variation(s) thereof and addition(s) thereto from time to time including any other instrument(s) now or hereafter or from time to time executed supplemental thereto or in substitution thereof) and made between the party whose name and particulars are more particularly specified in Section 4 of the First Schedule hereto (hereinafter referred to as 'the Borrower' which expressions shall, where the context so permits, includes his or her or its successors in title) and the Bank, the Bank has granted and made available or agreed to grant or make available or continue to grant and make available to the Borrower loan or banking or credit facility or facilities from time to time (hereinafter referred to as 'the Facilities') upon the terms and subject to the conditions contained therein.

[83] The definition section: section 2.01 describes:

(a) 'Facilities' — as all the facilities granted or made available or 'to be continued to be made available' by the plaintiff to the borrower company 'now or hereafter or from time to time';

(b) 'Facilities Agreement' — as the agreement made between the plaintiff and the borrower company at that time, including *additions* or supplementary agreements made 'thereafter and from time to time'; and

(c) 'Indebtedness' (of the defendant chargor) — as the aggregate of all monies payable by the defendant chargor 'from time to time'.

[84] The pertinent portion of section 2.01 is reproduced below:

ARTICLE 2

DEFINITION AND INTERPRETATION

Section 2.01 DEFINITION AND INTERPRETATION

'Chargor'	the person named in Section 1 of the First Schedule hereto and includes its/his/her heirs estate personal preserentatives successors in title and permitted assigns.
'Facilities'	All the facilities granted or made available or agreed to be granted or made available or to be continued to be made available by the Bank to the Borrower now or hereafter or from time to time in accordance with the terms and conditions set out in the Facilities Agreement and includes any part thereof.
'Facilities Agreement'	The agreement made between the Bank and the Borrower on the date as stated in Section 3 of the First Schedule hereto, including all amendments, additions or supplementary agreements or correspondence made thereafter from time to time.
'Indebtness'	The aggregate of all monies whether principal, interests, default interest, costs, charges, commission, default commission or otherwise outstanding or payable or agreed to be payable by the Borrower or the Chargor or any Security Party from time to time whether solely or jointly with any other person and ...

[85] Section 3.03 (heading: 'Continuing Security') provided that the defendant 'agrees and declares that the charge was expressly intended to be and shall be a *continuing security* for the payment of the Indebtedness'.

[86] Section 3.03 is set out here:

Section 3.03 CONTINUING SECURITY

The Chargor hereby agrees and declares that this Charge is expressly intended to be and shall be continuing security for the payment of the Indebtness notwithstanding that the Chargor and Borrower may at any time or from time to time cease to be indebted to the Bank for any periods and notwithstanding:-

A
(a) any account or accounts of the Chargor or the Borrower with the Bank may from any case whatsoever cease to be current and notwithstanding any settlement of the account or accounts or otherwise;

(b) any change by amalgamation consolidation or otherwise which may be made in the constitution of the Chargor or the Borrower or the Bank;

B
(c) the liquidation of the Chargor or the Borrower whether voluntary or compulsory.

[87] Section 9.02(1) provided that the defendant's liability and obligations C under the charge would 'continue to be valid and binding for all purposes', and that no change of any sort whatsoever in relation to or affecting the [defendant] chargor', would in any way affect the defendant's liability and obligations under the charge, 'whether past, present or future'.

D
[88] This is section 9.02:

Section 9.02 CHANGES IN THE CONSTITUTION OF THE BANK, CHARGOR OR BORROWER

E
(1) The security liabilities and or obligations created by this Charge shall continue to be valid and binding for all purposes whatsoever notwithstanding any change whether by reason of amalgamation bankruptcy death incorporation liquidation reconstruction winding up or otherwise howsoever in the name style constitution or composition of the Chargor and the expression the 'or' in this Charge includes the persons for F the time being deriving title under the Chargor and it is expressly declared that no change of any sort whatsoever in relation to or affecting the Chargor shall in any way whatsoever affect the security liabilities and or obligations created by this Charge in relation to any transaction whatsoever whether past present or future.

G
[89] As the charge was a continuing security that was enforceable for as long as the borrower company had banking facilities with the plaintiff, there was no obligation to get the defendant's consent every time that the plaintiff gave an additional facility to the borrower company.

H
[90] And so I held that the defendant's allegations under this ground did not tantamount to a cause to the contrary warranting a setting aside of the order for sale.

I
THE ANSWER TO THE FOURTH GROUND: THE RESERVE PRICE WAS NOT TOO LOW

[91] In his affidavit in support (dated 13 August 2021) of his application to set aside the order for sale, the defendant asserted that the reserve price for the

property for the second auction scheduled for August 2021 was too low. He asserted, without any evidential support, that the market value of the property at that time was between RM850,000 and RM900,000.

[92] He asserted further that even Rahim & Co's valuation report, prepared in March 2020, suggested a market value that was RM760,000, and yet the reserve price set for the second auction in August 2021 was only RM684,000 — far below the actual market value.

[93] He averred that he did not have enough time to produce a valuation report to disclose the then-current market value of the property.

[94] I found these assertions untenable. Firstly, the reserve price for the *first auction* in November 2020 was set at the market value of *RM760,000.* That first auction was abortive. There were no bidders at that reserve price. The plaintiff then applied to lower the reserve price for the second auction scheduled for August 2021. The court allowed the plaintiff to lower the reserve price to RM684,000.

[95] Secondly, since the defendant chose to challenge the valuation of the property and the reserve price for the second auction, it fell on the defendant to produce his own valuation report to substantiate his assertion that the reserve price was too low: *People Realty Sdn Bhd v Hong Leong Bank Bhd & Anor* [2007] 6 MLJ 595 at pp 598–599, paras [8] and [9]; [2007] 6 AMR 21; [2008] 1 CLJ 73.

[96] The defendant did not do this. He never produced a valuation report to show that the market value of the property was RM850,000 to RM900,000 (as he alleged). He asked for time to produce it, but failed to produce it.

[97] After he succeeded to get the order (dated 16 August 2021) to stay the second auction in *August 2021*, the defendant had approximately *eight months* to produce a valuation report that substantiated his assertion. His application to set aside the order for sale was heard and the order (dated 20 April 2022) dismissing it was given eight months after, in *April 2022.*

[98] The defendant had more than sufficient time to produce a valuation report. But he failed to do it.

[99] I therefore held that the defendant's assertion was untenable and did not amount to a cause to the contrary that justified setting aside the order for sale.

A THE SOLE GROUND RAISED IN THE DEFENDANT'S SUBMISSIONS WAS ON THE ISSUE OF SERVICE

[100] Before I conclude, I would like to point out that in the defendant's written submissions, his executive summary and his oral submissions on the day of the hearing — he only raised the argument that he was not properly served with the cause papers and the Form 16D.

[101] The defendant did not raise the other grounds discussed here. I nevertheless considered the other grounds — namely the issue about the plaintiff omitting to get his consent before giving the additional loan facilities, and the issue that the reserve price was too low — because the defendant averred to them in his affidavits. I dealt with them for the sake of completeness.

D CONCLUSION

[102] I answered the defendant's grounds as follows. I found that the plaintiff properly served on the defendant the cause papers for the foreclosure proceeding, in accordance with the ROC 2012 and the terms of the charge.

E

[103] I similarly found that the plaintiff properly served on the defendant the Form 16D default notice in accordance with the NLC and the terms of the charge.

F **[104]** The service of the cause papers and the Form 16D were regular.

[105] I found that the plaintiff had no obligation to get the defendant's consent when it gave additional facilities to the borrower company, because the charge was a continuing security, and the terms of the charge imposed no such obligation.

[106] I also found that the reserve price that was set for the second auction was not too low, because the market value of the property was in fact set as the reserve price for the first auction. The first auction was abortive. The court then allowed the reserve price to be lowered for the second auction.

[107] Additionally, the defendant did not produce a valuation report to substantiate this ground.

I

[108] None of the defendant's grounds tantamounted to a cause to the contrary to compel a setting aside of the order for sale.

[109] In the premises, I dismissed the defendant's application to set aside the

order for sale. I also ordered the defendant to pay to the plaintiff RM3,000 costs forthwith and in any event by 11 May 2022; costs were made subject to the allocatur.

Application dismissed.

Reported by Ashok Kumar